THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.8580 of 2006

Date 11-6-2007

Between:
K. Jai Raj

.....PETITIONER

AND

Government of A.P.,
Rep. by its Principal Secretary,
Medical and Health Department,
Secretariat, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.8580 of 2006

ORDER: (per Smt. T. Meena Kumari,J)

In this writ petition, the petitioner seeks a Writ of Mandamus declaring the action of the respondent authorities in discharging the petitioner through order No. 9035/E2C/2002, dated 30.6.2003 as illegal, arbitrary. He also sought for a consequential direction to the respondent authorities to reinstate the petitioner into service as Record Assistant or any equivalent post with all attendant benefits.

The petitioner herein was appointed as Record Assistant under the scheme of compassionate appointment on retirement of his mother on medical invalidation. When the petitioner's pay bill was submitted to the Treasury department, they raised an objection as to the appointment of the petitioner as Record Assistant, since there was no direct recruitment for the said post. The Government was also addressed in the matter and the Government after examining the case of the petitioner, instructed the concerned to terminate the services of the petitioner after giving due notice to him since the appointment of the petitioner itself was irregular. The 1st respondent thereafter issued show cause notice to the petitioner on 24.4.2003 calling upon him to explain as to why he should not be discharged from service. Petitioner submitted his explanation to the said show cause notice. He also filed O.A. No. 4641 of 2003 before the Tribunal assailing the said show cause notice. However, during the

pendency of the said O.A., the 2nd respondent through proceedings dated 30.6.2003 discharged the petitioner from service.

In the counter affidavit filed by the respondents before the Tribunal, the respondents contended that as the scheme of compassionate appointment is held to be unconstitutional by the High Court, the Government through G.O. Ms. No.202 and 203, GAD, dated 27.4.2002, banned all further recruitment under the said scheme. It was further contended that in view of the fact that the appointment of the applicant to the post of Record Assistant was irregular, they were directed to terminate the services of the applicant and to consider his case for appointment to the post of Panchayat Secretary in terms of G.O. Ms. No.44, dated 17.2.2003.

The Tribunal taking into consideration the facts and circumstances of the case and having perused the averments made in the counter affidavit, opined that since the petitioner was recruited directly as Record Assistant in violation of the Rules, it cannot interfere with the impugned show cause notice. However, in view of the policy of the Government as enunciated in G.O. Ms. No.44, G.A. (Ser.) Department, dated 17.2.2003, the Tribunal disposed of the O.A. directing the respondents to consider the case of the applicant for appointment under the provisions of the said G.O. Pursuant to the said order of the Tribunal, the Government examined the case of the petitioner in the light of G.O. Ms. No.44, dated 17.2.2003 and found him ineligible for appointment to the post of Panchayat Secretary and accordingly passed orders on 2.4.2005 rejecting the case of the petitioner.

Admittedly, the petitioner only challenged the order of discharge dated 30.6.2003 and he did not challenge the subsequent order of the 2nd respondent rejecting his case for appointment to the post of Panchayat Secretary.

At this stage, learned counsel for the petitioner sought liberty of this Court to challenge the said order of the 2nd respondent.

In the circumstances, we dismiss the writ petition reserving liberty to the petitioner to challenge the order dated 2.4.2005 of the 2nd respondent.

The writ petition is accordingly dismissed. No costs.

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T. MEENA KUMARI,J

DATE: 11th June, 2007

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G. CHANDRAIAH,J

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